IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

RSA NO.2766 1983

DATE OF DECISION: 04.7.2007

Kapoor Singh and another **...APPELLANTS**

VERSUS

Lajja Ram **...RESPONDENT**

CORAM

HON'BLE MR.JUSTICE PERMOD KOHLI

PRESENT: Mr.Chander Singh, Advocate for the appellants

Mr.Gopal Sharma, Advocate for the respondent

Permod Kohli, J.

This Regular Second Appeal arises out of the judgment and decree dated 2.11.1983 passed by the District Judge, Rohtak whereby he has set aside the judgment and decree dated 17.5.1982 passed by the Sub Judge Ist Class, Jhajjar, decreeing the suit of the plaintiff for permanent injunction.

The present appeal has been filed by the plaintiffs/appellants who filed the suit for permanent injunction claiming protection of their possession over the plot for the last 40 years, situated in Village Ukhal-Channa and sought a restraint order against the defendant/respondent from interfering in their possession. The suit

was resisted by the defendant/respondent, claiming to be in possession as a lessee of the Punjab Wakf Board at the rate of Rs.65 per annum. The defendant/respondent also pleaded that the plot in dispute was Takia (burial ground) in the revenue record being a part of Field No.1389 as per settlement of the year 1879. The trial court, after the trial of the suit, decreed the same in favour of the present appellants.

The respondent preferred an appeal before the District Judge, Rohtak against the judgment and decree dated 17.5.1982 passed by the trial court. During the pendency of the appeal, the Court passed an interlocutory order for spot inspection by Local Commissioner and Tehsildar, Jhajjar was appointed as Local Commissioner who visited the spot and submitted his report dated 3.12.1982. In the report, it was stated that the land was part of Takia and Field No.1389. Inviting objections from the present appellants who objected to the report of the Local Commissioner, the Court vide its interlocutory order, rejected the objections and accepted the report of the Local Commissioner. The Local Commissioner was examined by the Court. The First Appellate Court, accordingly, taking into consideration the report of the Local Commissioner which found the respondent to be in actual physical possession and on the basis of the other evidence, including the evidence from the Punjab Wakf Board confirming the status of the respondent as a lessee, set aside the judgment and decree of the trial court and dismissed the suit of the appellants. The Appellate Court held the respondent to be in possession of the suit property. These findings are assailed before

me on the ground that the Appellate Court is not competent to set aside the findings of the trial court and take into consideration the report of the Local Commissioner.

I have heard the learned counsel for the parties and perused the judgment impugned. The findings recorded by the First Appellate Court are not only based upon the report of the Local Commissioner who certified the possession of the respondent over the disputed plot, but also considered the evidence of the Wakf Board whereby the possession of the respondent as a lessee of the suit land as claimed by him has been found to be established. This finding of fact has not been challenged on any valid ground. It is settled law that First Appellate Court is the final court of fact and interference in Second Appeal is warranted only on existence of substantial questions of law. No such question has been framed nor shown to exist in the present appeal.

In view of the above, I find no merit in this Regular Second Appeal which is accordingly dismissed.

(PERMOD KOHLI)
JUDGE

04.7.2007
MFK

NOTE:Whether to be referred to the Reporter or not:YES/NO